



January 22, 2014

Re: Comments on Medicaid 1115 Draft Application

Plaintiffs' counsel in *Williams v. Quinn* (No. 05 C 4673, N.D. Ill.) submit the following comments on the state's draft 1115 waiver application.

Overall, we support the direction in which the state is moving with its 1115 application. We believe that, properly implemented, the 1115 waiver has the potential to bring needed changes to the state's system of services for individuals with disabilities. We have some concerns about particular issues, however. These concerns are outlined below.

We are extremely troubled by the language on pages 39-40 of the application that seeks to waive the IMD exclusion for Specialized Mental Health Rehabilitation Facilities (SMHRFs). It is problematic enough that these outmoded facilities, which often simply warehouse people with mental illnesses and frequently use restrictive and troubling privilege systems to prevent residents from exercising even basic freedoms like welcoming guests or leaving the facility, now have expanded authority to perform additional functions including triage, crisis stabilization, and "transitional living." The *Williams* Court Monitor expressed grave concerns about the legislation establishing SMHRFs in one of his reports to the court, observing that it would take the state in the wrong direction and undermine its ability to comply with the Consent Decree. And as we have seen in reviewing records for numerous residents, these facilities are ill-equipped to stabilize people who are in crisis.

Additionally, we are concerned that the SMHRFs' new authority to provide triage and crisis services may be used to admit people who will then get "stuck" in these facilities due to the unavailability of community services and will simply be transitioned to longer term units in the institutions. The state's draft SMHRF regulations do little to allay this concern. As hundreds of IMD residents have exercised their right to move to supported housing under the *Williams* Decree, hundreds more have been admitted, resulting in a minimal census decrease over the last several years. The availability of FFP for serving individuals in IMDs is likely to further exacerbate this trend and create perverse incentives to serve individuals with mental illnesses in expensive, segregated settings that promote dependence and hinder recovery.

We do not believe Title XIX allows waiver of the IMD exclusion under a 1115 waiver. The provisions of 42 USC 1396d, including the IMD exclusion, are not among those permitted to be waived under the authority in 42 USC 1315(a) concerning 1115 waivers.

Another concern we have is that it is not clear from the waiver application that CCEs, ACEs and health homes should have among their purposes to promote people with disabilities living in their own homes whenever possible. We strongly urge you to include that objective among the purposes listed in the waiver application; taking that step would have important ramifications for how the managed care system functions and will help promote compliance with the various Olmstead consent decrees.

Finally, we think it is important for the waiver application to state that, for class members in the *Williams*, *Colbert* and *Ligas* cases, the 1115 waiver will be implemented consistently with the consent decrees in those cases. For example, assessments conducted pursuant to the waiver must be conducted in ways that are consistent with these decrees and should not be used to undermine class members' rights to relief in these cases.

Thank you for the opportunity to comment on the draft waiver application.

Sincerely,

Benjamin S. Wolf